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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 466/2001 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT	Shyam Sundar, Son of Parmeshwar, aged about 23 years, Resident of Village Nargoda, P.S. Sipat, District Bilaspur. C.G.
		-Versus-
	RESPONDENT	State of C.G. through S.P. Bilaspur.
	(Appeal under Section 374(2) of the Cr.P.C.)	
	Division Bench :	
	Hon'ble Mr. L.C. Bhadoo &	
	Hon'ble Mr. Dhirendra Mishra, JJ	
	05.07.2007	
	Shri R.K. Jaiswal, counsel for the appellant.	
	Shri G.D. Vaswani Govt. Advocate for the State.	
	The appeal is directed against the judgment of conviction and order of sentence dated 13.03.2001 passed by First Additional Sessions Judge, Bilaspur in Session Trial No 339/2000 whereby learned First Additional Sessions Judge after holding the accused-appellant guilty for commission of the offence under Sections 304 (B) and 498 (A) of the IPC, sentenced him to undergo R.I. for life and to pay a fine of Rs.2000/-, in default of payment of fine to further undergo imprisonment for six months and to undergo R.I. for 2 years and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo imprisonment for six months respectively. However, co-accused Satin Bai was acquitted.	
	The case of the prosecution in brief is that Savita was married to the accused-appellant three years prior to the date of the incident, i.e. 06.12.1999 the dayon which Savita was admitted in the hospital in burnt condition and she succumbed to burn injuries on 11.12.1999 at 18.15 p.m.. Therefore merg	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

intimation was sent from the hospital to the SHO, City Kotwali, Bilaspur at 19.40 p.m. The postmortem was conducted on the body of Savita in which the doctors opined the cause of death of Savita is burn injuries. Thereafter, on 27.05.2000, father of Savita namely Bharat Lal lodged a report Ex-P/1 before the Superintendent of Police, Bilaspur to the effect that the accused and his mother used to demand dowry. In order to meet the demand they were regularly subjecting Savita to cruelty and thereafter in suspicious circumstance Savita died on account of burn injuries. Based on the report the case was registered on 01.06.2000.

After completion of the investigation, charge sheet was filed in the Court of J.M.F.C., Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur from where learned First Additional Sessions Judge, Bilaspur, received the case on transfer.

The prosecution in order to establish the charge against the accused examined 14 witnesses. Statement of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence.

After hearing the arguments of the respective counsel, the learned First Additional Session Judge convicted the accused as aforementioned. However, he acquitted co-accused Satin Bai.

We have heard Shri R.K. Jaiswal, counsel for the appellant and Shri G.D. Vaswani, Govt. Advocate for the State.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Having heard counsel for the parties, having perused the record and evidence available on record, we are of the considered opinion that the prosecution has utterly failed in establishing the charge against the accused/appellant for the following reasons:

(1) It is admitted position that Savita sustained burn injuries on 06.12.1999 and she succumbed to the burn injuries on 11.12.1999 in the hospital. Perusal of the inquest report reveals that father of the deceased, namely, Bharat Lal was present and in his presence only inquest report was prepared. In his evidence he has stated that he came to know about the burn injury after the admission of his daughter in the hospital and immediately went there. In the inquest report, Bharat Lal has not made any complaint regarding setting Savita on fire by the accused. P.W-6, Uttara Bai, sister of the deceased also stated that she came to know through newspaper that Savita sustained burn injuries and was admitted in the hospital. She reached Dharm Hospital where Savita was admitted in burnt condition. She was talking. On enquiry her sister disclosed to her that the accused gave beating to her on the ground that the vegetable cooked by Savita was not tasty. When Savita replied that if the vegitable is not tasty, then he should send her to her parents' place on which the accused said he will commit her murder, after pouring kerosene on her body, he set her on fire. If this was made known to Uttara Bai, then she might have disclosed to her father Bharat Lal. Why that fact was not raised by Bharat Lal when the inquest report was being prepared? Moreover, statements of these witnesses under Section 161 Cr.P.C. Ex-D/3 was recorded only on 16.06.2000 whereas the incident took place on 06.12.1999. Accused after giving beating to Savita set her on fire, why that statement was not recorded immediately on that time. On the contrary, as per the evidence of S.D. Mahant ,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

A.S.I, on the fateful day he was Sub Inspector of Police Kotwali, Seepat and he registered the merg intimation Ex-P/10 as the deceased died on account of sustaining burn injuries while cooking meal. Thereafter the final report was lodged. He further stated that he made enquiry from neighbourhood of the deceased. On his enquiry, nothing was detected that Savita died under suspicious circumstances. Therefore, the crime was not registered. The dying declaration was recorded by the Executive Magistrate on 07.12.1999 in which Savita categorically stated that when she was cooking vegetable, her sari caught fire and she sustained burn injuries. No allegation regarding the demand of dowry and setting her on fire was levelled in the dying declaration. Doctor at 4.45 p.m. gave certificate that patient was able to give her statement. Even Dr. M. Sen (P.W-3) who attended Savita in the hospital has also sated that Savita was admitted in the burning unit, she sustained burn injuries up to 60-65%, she was conscious and replying the questions. He stated that the injuries which were present on her body can be sustained while cooking the meal.

Now coming to the report Ex.P/1 lodged by Bharat Lal, father of the deceased on 23.05.2000, in the first instance, the sister of the deceased came to know that the accused after beating Savita set her on fire that is why this report was lodged. There is delay of six months in lodging the report and whatever has been stated by Uttara Bai has not been mentioned in this report. In this report, Bharat Lal has mentioned that the accused was regularly subjecting Savita to cruelty on account of demand of dowry, but neither any report was lodged nor any complaint was made by these persons. Whatever has been mentioned in the report Ex.P/1 that has not been proved by cogent evidence before the Court. Uttara Bai P.W-6 has categorically stated that the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

deceased disclosed her that she was set on fire by the accused, whereas learned Additional Sessions Judge convicted the accused under Section 304(B) of the IPC.

For the foregoing reasons, the prosecution has utterly failed to establish the charge against the accused under Sections 304(B) and 498(A) of the IPC beyond reasonable doubt . Therefore, conviction of the accused/appellant under Sections 498(A) and 304 (B) of the IPC cannot be sustained.

In the result, the appea succeeds. Conviction and sentences imposed upon the accused/appellant under Sections 498(A) and 304(B) of the IPC are set aside and he is acquitted of the said charges. As per the judgment of the trial Court, the accused is in detention since 05.06.2000, therefore, he be set at liberty forthwith, if not required by any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Bini/
Sinha